

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 683 OF 2006
IN
WRIT PETITION NO. 501 OF 2005

1. Assissi Co-operative Housing
Society Limited and others. .. Appellants.

V/s.

1. The State of Maharashtra & Others. .. Respondents.

Mr.A.A.Joshi with Mr.S.S.Joshi for the Appellants.

Mr.Milind More, Assistant Government Pleader for the
Respondents Nos.1 to 4.

Mr.A.S.Desai with Mr.R.S.Ghadge for the Respondents No.
6 and 7.

CORAM : R.M.LODHA & S.A.BOBDE, JJ.

DATED : 15th SEPTEMBER, 2006.

P.C.:

. We heard Mr.A.A.Joshi, the counsel for the
Appellants.

2. Section 73 (1AB) of the Maharashtra Co-operative
Societies Act, 1960 reads thus:-

."[(1AB) The members of the committee
shall be jointly and severally responsible for
all the decisions taken by the committee during
its term relating to the business of the
society. The members of the committee shall be
jointly and severally responsible for all the
acts and omissions detrimental to the interest
of the society. Every such member shall execute
a bond to the effect within fifteen days of his
assuming the office, in the form as specified by

the State Government by general or special order. The member who fails to execute such bond within the specified period shall be deemed to have vacated his office as a member of the Committee:

. Provided that, before fixing any responsibility mentioned above, the Registrar shall inspect the record of the society and decide as to whether the losses incurred by the society are on account of acts or omissions on the part of the members of the committee or on account of any natural calamities, accident or any circumstances beyond the control of such members :

. Provided further that, any member of the committee, who does not agree with any of the resolution or decision of the committee, may express his dissenting opinion which shall be recorded in the proceedings of the meeting and such member shall not be held responsible for the decision embodied in the said resolution or such acts or omissions committed by the committee of that society as per the said resolution. Such dissenting member, if he so desires, may also communicate in writing his dissenting note to the Registrar within seven days from the date of the said resolution or decision. Any member, who is not present for the meeting in which the business of the society is transacted, and who has not subsequently confirmed the proceedings of that meeting, such member shall also not be held responsible for any of the business transacted in that meeting of the society.].

3. Relying on Section 73 FF, the counsel for the Appellants urged that the provision contained in Section 73 (1AB) that every member of the committee shall execute a bond within 15 days on his assuming office and if he fails to execute such bond within the said period, he shall be deemed to have vacated his office as member

of the committee, is not mandatory. According to him the said provision is directory. We do not think so. The provision contained in Section 73FF, requiring every member of the committee to execute a bond within 15 days on his assuming the office, is salutary. That the said provision is imperative in nature is seen from the fact that the default in not executing the bond within 15 days on his assuming the office, result in vacation of the office by the member of the committee by operation of law. The provision provides for consequence for non-compliance and, therefore, is mandatory in nature.

4. The Appeal has no force and is dismissed in limine.

(R.M.LODHA, J)

(S.A.BOBDE, J)

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